

**MISSOURI STATE AUDITOR'S OFFICE  
FISCAL NOTE (16-062)**

**Subject**

Initiative petition from Winston Apple regarding a proposed amendment to Chapters 286 and 143 of the Revised Statutes of Missouri. (Received May 18, 2015)

**Date**

June 8, 2015

**Description**

This proposal would amend Chapters 286 and 143 of the Revised Statutes of Missouri.

The amendment is to be voted on in November 2016.

**Public comments and other input**

The State Auditor's office requested input from the **Attorney General's office**, the **Department of Agriculture**, the **Department of Economic Development**, the **Department of Elementary and Secondary Education**, the **Department of Higher Education**, the **Department of Health and Senior Services**, the **Department of Insurance**, **Financial Institutions and Professional Registration**, the **Department of Mental Health**, the **Department of Natural Resources**, the **Department of Corrections**, the **Department of Labor and Industrial Relations**, the **Department of Revenue**, the **Department of Public Safety**, the **Department of Social Services**, the **Governor's office**, the **Missouri House of Representatives**, the **Department of Conservation**, the **Department of Transportation**, the **Office of Administration**, the **Office of State Courts Administrator**, the **Missouri Senate**, the **Secretary of State's office**, the **Office of the State Public Defender**, the **State Treasurer's office**, **Adair County**, **Boone County**, **Callaway County**, **Cass County**, **Clay County**, **Cole County**, **Greene County**, **Jackson County Legislators**, **Jasper County**, **St. Charles County**, **St. Louis County**, **Taney County**, the **City of Cape Girardeau**, the **City of Columbia**, the **City of Jefferson**, the **City of Joplin**, the **City of Kansas City**, the **City of Kirksville**, the **City of Mexico**, the **City of Raymore**, the **City of St. Joseph**, the **City of St. Louis**, the **City of Springfield**, the **City of Union**, the **City of Wentzville**, the **City of West Plains**, **Cape Girardeau 63 School District**, **Hannibal 60 School District**, **State Technical College of Missouri**, **Metropolitan Community College**, **University of Missouri**, and **St. Louis Community College**.

**Assumptions**

Officials from the **Attorney General's office** indicated they assume that any potential costs arising from the adoption of this proposal can be absorbed with existing resources.

Officials from the **Department of Economic Development** indicated no impact for their department.

Officials from the **Department of Elementary and Secondary Education** indicated legislation does not impact their department or local schools.

Officials from the **Department of Higher Education** indicated they reviewed the provisions of this initiative petition and determined it would not have a direct fiscal impact on their department.

Officials from the **Department of Health and Senior Services** indicated no fiscal impact on their department.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** indicated this petition, if passed, will have no cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated:

It could affect any agency that administers any public assistance programs.

Space will be required for 948 FTE throughout the state.

There are over 138,000 small businesses covered under Missouri's unemployment insurance system. Because Missouri's Unemployment Insurance Compensation (UI) program is certified in conformity with Federal UI laws, most employers never actually pay the total 6.0% in FUTA taxes due to the credits they receive for the payment of state unemployment taxes and for paying reduced rates under an approved experience rating plan. However, since this bill could cause Missouri's program to be out of compliance or out of conformity, Missouri employers would pay the full 6.0%. If this petition causes Missouri's program to be out of compliance or out of conformity, Missouri employers would pay the full 6.0% or approximately an additional \$889 million per year.

In addition to standard per FTE costs for IT services. ITSD estimated costs of \$299,538 in FY 2017 and \$61,045 in FY 2018 to set up and implement the computer system.

A surtax on capital gains of 10% would be imposed beginning with the 2017 tax year. DOLIR defers to the Office of Administration regarding the estimate of revenue collected from this surtax.

This petition seeks to create a new section 286.131 requiring the Division of Employment Security to provide employment through a program called "Public Sector Employment" in lieu of unemployment benefits. It is unclear to the DES whether this public works program is designed to be voluntary or mandatory. If this language is interpreted to prohibit otherwise eligible individuals from filing claims for the payment of unemployment benefits, a conformity issue with federal law would be raised.

This petition also creates section 143.012.2 that, under certain conditions, would permit the state to seek funding for the program from various forms of public assistance. If this provision would allow the state to seek funding from the unemployment insurance trust fund for the public works program then a conformity issue with federal law would be raised.

The federal and state governments are jointly responsible for administering the Unemployment Insurance (UI) program. State administrative grants are needed to operate the UI program and for employers to qualify for certain tax credits.

Depending upon interpretation, this bill could create several conformity issues with federal unemployment law. Non-conformity with federal law could jeopardize the certification of Missouri's UI program. If the program fails to be certified, Missouri would lose approximately \$38 million in federal funds the state receives each year to administer the UI program. Additionally, Missouri would lose the approximately \$12 million in federal funds each year the Department of Economic Development-Division of Workforce Development uses for Wagner-Peyser reemployment services.

The FUTA imposes a 6.0% payroll tax on employers. Most employers never actually pay the total 6.0% due to credits they receive for the payment of state unemployment taxes and for paying reduced rates under an approved experience rating plan. FUTA allows employers tax credits up to a maximum of 5.4% against the FUTA payroll tax if the state UI law is approved by the Secretary of Labor. However, if this bill causes Missouri's program to be out of compliance or out of conformity, Missouri employers would pay the full 6.0% or approximately an additional \$889 million per year.

DOLIR assumes the state unemployment tax would still be collected and deposited into the Unemployment Insurance (UI) Trust Fund because the proposal does not repeal those statutes. If the UI Trust Fund no longer pays out unemployment benefits, the lack of unemployment payouts would lead to a 0% contribution rate for employers with no revenue deposited to the UI Trust. This would effectively negate the purpose of the fund and the statutes that govern it.

Regardless of whether the program would be mandatory, DOLIR estimates it would need FTE and ongoing costs to set up and administer the program.

As the program becomes established, individuals would be deferred from public assistance to the "Public Sector Employment" program, which could result in a decrease in unemployment benefit payments by DOLIR and in public assistance payments from other agencies.

Ongoing costs associated with the program would be the same as those covered in the estimate period.

#### Revenue Estimate

The Department of Labor and Industrial Relations (DOLIR) defers to the Office of Administration (OA), Budget and Planning, for a projection of revenue generated based on the 10% surtax of capital gains. For the purpose of this estimate, the revenue is projected at \$617,500,000 annually.

#### Division of Employment Security

This petition creates a new section 286.131 to establish a public sector works program to be operated by the Missouri Division of Employment Security (DES) to provide employment in lieu of unemployment benefits to as many eligible citizens as possible. It is unclear whether this program would be voluntary or mandatory. If the program is interpreted to be a mandatory program and prohibits otherwise eligible individuals from filing claims for the payment of unemployment benefits, a conformity issue with federal law would be raised.

The federal and state governments are jointly responsible for administering the Unemployment Insurance (UI) program. State administrative grants are needed to operate the UI program and for employers to qualify for certain tax credits. Non-conformity with federal law could jeopardize the certification of Missouri's UI program. If the program fails to be certified, Missouri would lose approximately \$38 million in federal funds the state receives each year to administer the UI program. Additionally, Missouri would lose the approximately \$12 million in federal funds each year the Department of Economic Development-Division of Workforce Development uses for Wagner-Peyser reemployment services.

If this program is designed to be voluntary, meaning individuals have a choice between accepting a public works position or claiming unemployment benefits, then no federal conformity issue is raised. However, the DES receives a federal unemployment insurance (UI) administrative grant to operate Missouri's UI program. Section 303(a)(8) of the Social Security Act limits the expenditure of UI grant funds to amounts necessary for "the proper and efficient administration" of the state's UI law. The costs for developing, administering, and maintaining the "Public Sector Employment" program are not considered a necessary expense for the "proper and efficient administration" of the state's UI law; therefore, they are not allowable expenditures from the state's UI grant. As such, all funding necessary to develop, administer and maintain this program will need to come from the bonds and surtax established by the proposed statutes or from general revenue.

The DES estimates the total cost to develop, administer and maintain the Public Sector Employment program to be roughly \$1.4 billion per year if it were to serve the entire population of unemployed individuals which currently claim benefits. In estimating the total costs of the program, the DES made the following assumptions and estimates.

#### Placement and DES Administrative Costs

The DES estimates 120,000 individuals will qualify for unemployment benefits annually and be placed in the Public Sector Employment program. The DES estimates the average costs, with fringe, per DES employee is about \$30.00 per hour. The DES assumes it will take a total of 15 hours staff time for each Public Sector Employment job placement/enrollment at \$30 per hour for a total cost of \$54,000,000.00 (120,000 x \$450). This equates to approximately 865 staff. Additional funds will be needed for ongoing equipment and operating supplies to support the operation of the program.

In addition, the DES assumes it will need 10% of the DES staffing costs for making placements to manage and administer the Public Sector Employment program. This equates to \$5,400,000.00 (\$54,000,000 X .10) and approximately 51 FTE and ongoing expenses related to managing the program.

#### Wages Paid to Participants

The DES assumes the applicants placed in the job programs will be considered state employees. The DES assumes it will provide 20 weeks of work (40 hours each week) for each applicant. The DES assumes most of the position will be minimum wage jobs, and the DES estimates that average hourly wage, with fringe, for each participant placed in the program will be \$12.00 per hour. If the DES were to employ all 120,000 estimated applicants, at \$12.00 per hour, for 20 weeks, the total cost of the annual wages paid to the participants would be \$1,152,000,000.00 (120,000 X 20 X 40 X \$12).

#### Material Costs for Construction Projects

In calculating the material costs, the DES assumes labor to material costs at 3 to 1 ratio. Using this ratio, the annual material cost is estimated at \$380,160,000.00 (\$1,152,000,000 X .33).

#### Management of Construction Projects

The DES will contract the management of the construction projects to the Office of Administration, Division of Design and Construction. The DES assumes management fees will be 10% of the cost of wages and material, which equates to \$153,216,000.00 (\$1,532,160,000 X .10).

#### Skill Assessment and Training Costs

The DES will contract with the Department of Economic Development, Division of Workforce Development for the cost of administering skills test and job training to each applicant in the Public Sector Employment program. The DES estimates the skills test of each participant will require 0.5 hours of time at \$30.00 per hour for a total cost of \$1,800,000 (120,000 X \$15). In addition, the DES estimates the average training for

each participant will require 20 hours of time at \$30.00 per hour for a total cost of \$72,000,000 (120,000 X \$600).

#### Monitoring of Participants

The DES will contract with the Department of Social Services for the cost of monitoring each participant in the Public Sector Employment program. The DES estimates the monitoring of each participant will require 8 hours of time at \$30.00 per hour for a total cost of \$28,800,000 (120,000 X \$240).

Section 143.012.2 stipulates that under certain conditions the state shall seek funding for the public sector works program from various forms of public assistance, if approved by the federal government. If there are no public assistance funds available, the program would be supported by the capital gains surtax and general revenue.

DOLIR assumes the state unemployment tax would still be collected and deposited into the Unemployment Insurance (UI) Trust Fund because the proposal does not repeal those statutes. If the UI Trust Fund no longer pays out unemployment benefits, the lack of unemployment payouts would lead to a 0% contribution rate for employers with no revenue deposited to the UI Trust. This would effectively negate the purpose of the UI Trust fund and the statutes that govern it.

#### Labor and Industrial Relations Commission (LIRC)

The LIRC would be responsible for compensation of the individuals working in this program, setting the policies and defining the work done through the program.

A Project Director will work with the Commissioners to set policy and oversee the efficiency and ongoing needs of the program. This position will be responsible to coordinate the solicitation and approval of qualifying work, coordinate the establishment of wages for all work, oversee compensation surveys, set and review performance measures, determine the effectiveness of the program, and provide oversight to ensure DES is implementing the program in accordance with the policies enacted by the LIRC.

Set up of the program will require legal research, promulgation of rules and regulations, and contract oversight which would be performed by one Legal Counsel.

Two Special Assistants/Office and Clerical would provide support to the Project Director and Legal Counsel, including routine clerical duties; scheduling meetings with the Commission; performing data entry; and updating rules, regulations, and policies as necessary.

#### Departmental Administration

The DES assumes the 120,000 participants would be treated as employees of the state for the weeks worked in the program. Therefore, in order to process and support administrative functions associated with the additional 933 FTE required to implement the program and the 120,000 participants in the program, additional administrative staff will be required. The majority of administrative functions would be absorbed by the

department. However, DOLIR assumes it would require up to 28 FTE to process employment documents for the 120,000 program participants annually.

#### Information Technology needs:

The assumptions made are to import information from a new client public service job application form into a database. Build new web pages to display and update the client information. Create a new exchange of data with DMH to retrieve information on substance abuse, other additions, and mental health issues for clients that have a public service job. Create a new exchange of data with DSS to gather information on clients that have a public service job that are failing to provide adequately for their dependents. Create a new exchange with DSS to send client information to have vouchers produced from the DSS programs currently in place like food stamps. Create a new exchange with Revenue to receive client information for the W-4 dependent. Create a new exchange with DED to receive client information on aptitude test and training. Create a new exchange with a vendor to send payment information for them to produce the payment. Create a new exchange with a SAMII. If DOLIR cannot use DSS voucher system then the cost will increase significantly for DOLIR to produce vouchers. Create a financial min system to track the financial piece along with financial reports. Scanning and imaging of the form. The system will require a new database and services from the State Data Center.

#### SUMMARY

The effective date of the program start is June 1, 2017. DOLIR assumes that there would be ramp-up time required to develop the program, implement the systems and framework, and train staff in order to begin June 1, 2017. The estimated cost per participant in the Public Sector Employment Program is \$15,688 ( $\$1,882,606,164 \div 120,000$ ) in FY 2018. Using the annual revenue estimate of \$617,500,000, they estimate 39,361 individuals could participate in the Public Sector Work Program each year ( $\$617,500,000 \div \$15,688$ ). If revenues increase or decrease in any given year, the number of participants in the program would rise or fall proportionally. DOLIR estimates the fiscal impact of this petition at \$0-(\$667,500,000) annually, but could be up to \$1,882,606,164 if funds were available based on the current rate of unemployment insurance claims.

Officials from the **Department of Revenue** indicated the total increased costs would be \$149,929 for FY 2016, \$165,921 for FY 2017, and \$167,614 for FY 2018. Increased revenue is expected to be \$617,500,000 per year.

If excess funds remain after all applicants have been employed, the legislation transfers this excess to General Revenue, less the reserve sufficient to meet the next 12 month period.

This legislation may create a positive impact on state revenues.

## Section 143.012

Beginning January 1, 2017, the legislation imposes a ten percent (10%) surtax on capital gains reported on a Missouri resident taxpayer's federal tax return. Once implemented, if excess funds exist after all applicants are employed, less the reserve necessary to fund the next twelve months, the excess funds shall be transferred to General Revenue.

For tax year 2012, positive capital gains of \$6.175 billion were reported on federal tax returns filed by Missouri residents. The Department estimates \$617.5 million will be collected from the 10 percent surtax to provide funding for public sector employment through the Division of Employment Security.

### Administrative Impact:

#### Personal Tax

Personal Tax requires form and programming changes. Additionally, Personal Tax requires two (2) Revenue Processing Technicians I (Range 10, Step L) for error correction and correspondence.

#### Collections & Tax Assistance:

This section will see additional contacts on the surtax, notice of adjustment, and billings. Collections & Tax Assistance requires two (2) Tax Collection Technicians I (Range 10, Step L) for additional contacts on the delinquent and non-delinquent tax lines. Each technician requires CARES equipment and license.

Officials from the **Department of Public Safety** indicated they see no fiscal impact due to this initiative petition.

Officials from the **Department of Social Services** indicated no fiscal impact on their department.

Officials from the **Governor's office** indicated there should be no fiscal impact to their office.

Officials from the **Missouri House of Representatives** indicated no impact to their office resulting from this initiative petition.

Officials from the **Department of Conservation** indicated that no adverse fiscal impact to their department would be expected as a result of this proposal.

Officials from the **Office of Administration** indicated:

The proposal adds Sections 286.131 and 143.012, RSMo, to create a Public Sector Employment program, administered by the Division of Employment Security. The program is to provide employment to eligible citizens in lieu of unemployment benefits. Bonds are to be issued to provide initial funding and a new 10% surcharge on capital gains imposed to pay for the principle and interest on bonds along with the program costs.



This initiative does not specify who within the state has the authority to issue bonds. There must be a vote of the citizens or there must be a specifically named Board of which a majority vote is required before bonds are issued. If it was determined that the Board of Public Buildings would issue the bonds, the bond issuance duties would be carried out by the Office of Administration. Those duties could be assumed by current staff at no additional cost. However, there would be a cost to the state for the bond issuance and potentially for the principal and interest payments until the MHIC became self-supporting. The Office of Administration is unable to estimate the cost as it would be dependent upon the amount of bonds issued. For example, issuing \$10,000,000 would cost about \$692,000 per year for 25 years plus an issuance cost of \$250,000. It is expensive to issue bonds regularly, especially for relatively small amounts of money such as this. It may make more sense for an entity to borrow funds from a bank in the form of a revolving loan instead of through the municipal markets.

This initiative also enacts a 10 percent capital gains surtax to provide funding for the public sector employment through the Division of Employment Security. Using Tax Year 2012 data, capital gains for Missouri taxpayers totaled \$617.5 billion; therefore, we estimate that 10 percent surtax would increase total state revenue by up to \$617.5 million with the revenue directed to the program. If it is determined there are excess funds from the surtax, those excess funds shall be transferred to the general fund.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated no fiscal impact on their office.

Officials from the **Secretary of State's office** indicated their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Their office is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. Funding for this item is adjusted each year depending upon the election cycle with \$1.3 million historically appropriated in odd numbered fiscal years and \$100,000 appropriated in even numbered fiscal years to meet these requirements. Through FY (fiscal year) 2013, the appropriation had historically been an estimated appropriation because the final cost is dependent upon the number of ballot measures approved by the General Assembly and the initiative petitions certified for the ballot. In FY 2013, at the August and November elections, there were 5 statewide Constitutional Amendments or ballot propositions that cost \$2.17 million to publish (an average of \$434,000 per issue). In FY 2015, the General Assembly changed the appropriation so that it was no longer an estimated appropriation and their office was appropriated \$1.19 million to publish the full text of the measures. Due to this reduced funding, their office reduced the scope of the publication of these measures. In FY 2015, at the August and November elections, there were 9 statewide Constitutional Amendments or ballot propositions that cost \$1.1 million to publish (an average of \$122,000 per issue). Despite the FY 2015 reduction, their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it

needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition will not have any substantial impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office.

Officials from **Greene County** indicated there are no estimated costs or savings to report from their county for this initiative petition.

Officials from the **City of Columbia** indicated it's not clear if the proposed amendment would have a fiscal impact on their city. If the work program is limited solely to state-funded projects, direct impact is less likely. If the work also extends to local public projects, the new workers could displace public employees or local or regional contractors who normally bid for this work. Personal and corporate income, and taxes paid on income, as well as sales taxes paid on purchases in Columbia, could be affected.

Officials from the **City of Kansas City** indicated this initiative petition has no fiscal cost to their city. It would have a positive fiscal impact if these citizens worked on KCMO projects and were funded by this program. It is impossible to estimate the fiscal impact until the number of positions funded for KCMO projects was determined.

Officials from **Metropolitan Community College** indicated no anticipated impact for their college.

The State Auditor's office did not receive a response from the **Department of Agriculture**, the **Department of Transportation**, **Adair County**, **Boone County**, **Callaway County**, **Cass County**, **Clay County**, **Cole County**, **Jackson County Legislators**, **Jasper County**, **St. Charles County**, **St. Louis County**, **Taney County**, the **City of Cape Girardeau**, the **City of Jefferson**, the **City of Joplin**, the **City of Kirksville**, the **City of Mexico**, the **City of Raymore**, the **City of St. Joseph**, the **City of St. Louis**, the **City of Springfield**, the **City of Union**, the **City of Wentzville**, the **City of West Plains**, **Cape Girardeau 63 School District**, **Hannibal 60 School District**, **State Technical College of Missouri**, **University of Missouri**, and **St. Louis Community College**.

## **Fiscal Note Summary**

If approved, state governmental entities estimate annual revenue increases of about \$617 million to fund the proposed program. State government may lose \$50 million in federal funding annually and businesses in the state may have increased federal unemployment tax costs of \$889 million annually. The fiscal impact to local government is unknown.